

# SOUTH PACIFIC TUNA CORPORATION

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Mr. David G. Burney, CEO and President  
South Pacific Tuna Corporation

House Committee on Foreign Affairs, Subcommittee on Asia, the Pacific and the Global  
Environment

## The Conservation and Management of Highly Migrating Fish Stocks in the Western and Central Pacific Oceans

Mr. Chairman and members of the House Foreign Affairs' Subcommittee on Asia, the Pacific and the Global Environment, on behalf of the South Pacific Tuna Corporation (SPTC), I want to express our gratitude for being invited to testify here today on the very important subject of tuna conservation in the central and western Pacific Ocean. For your background, SPTC will be the manager of twelve (12) distant water tuna purse seine vessels that are currently being documented under U.S. law to fish exclusively in the western and central Pacific Ocean pursuant to a fisheries treaty between the United States and sixteen Pacific Island governments (SPTT). In addition to being CEO and President of SPTC, I'm also the Managing Partner and Chairman of the Board of Ocean Global Inc. and Sea Global Inc., the owners of the twelve vessels in question.

Prior to becoming the CEO and President of SPTC in June of 2006, I spent over twenty-five (25) years as the Executive Director of the U.S. Tuna Foundation (USTF), a non-profit trade association representing the national and international interests of the U.S. canned tuna industry. During this time, USTF represented all of the U.S. branded canned tuna companies and the distant water U.S. tuna purse seine fleet. USTF represented the interests of the U.S. tuna industry on all of the various tuna Regional Fisheries Management Commissions (RFMO) including, the Inter-American Tropical Tuna Commission (IATTC), the International Commission for the Conservation of Atlantic Tunas (ICCAT) and the Western and Central Pacific Fisheries Commission (WCPFC).

- **Background**

The subject of tuna conservation has been an integral part of my professional career since I first became legal counsel to the American Tunaboat Association in 1972. During the early 1970s and early 1980s, I was involved in the multi-lateral discussions that led up to the signing in 1982 of the United Nations Convention of the Law of the Sea (UNCLOS). Prior to the signing, the ownership, conservation and management of highly migratory tuna had been hotly debated.

The United States neither ratified the UNCLOS, nor recognized the claims of coastal States who declared sovereignty over the migratory tuna when it passed through their juridical zone (EEZ). The official U.S. position at the time was that tuna belonged to no one country because of their migratory

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nature and they could only be effectively conserved, and managed, as a biological unit throughout their entire range.

The UNCLOS clearly recognized the difference between conserving and managing “standing stocks of fish” and highly migratory fish such as tuna. Article 61, dealing with standing stocks of fish, gave the coastal States the right “to determine the allowable catch of the living resources in its exclusive economic zone” and to, “ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over exploitation”.

On the other hand, Article 64, dealing with highly migratory fish stocks, specifically provides that “the coastal State and other States whose nationals fish in the region for the highly migratory species...”, “shall cooperate directly or through appropriate International organizations with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region, both within and beyond the exclusive economic zone”.

In the 1990 amendments to the Magnuson Fisheries Conservation and Management Act (MFCMA), the United States for the first time claimed a form of coastal State preference over the highly migratory tuna resource within its EEZ. The United States claimed the right to regulate the harvest of the resource found within its EEZ but made it clear that the resource could only be effectively conserved and managed through international cooperation. In essence, the United States did not want foreign fishing fleets to have unrestricted access to the highly migratory tuna stocks found in the U.S. juridical zone but recognized that effective conservation and management required multilateral cooperation.

Prior to the MFCMA amendments of 1990, the U.S. tuna industry opposed the extended fisheries jurisdiction claims by coastal States, as not being compatible with Article 64 of UNCLOS. The industry believed (and continues to believe) that highly migratory tuna cannot be managed on a unilateral basis. Further, the industry was aware that most harvesting of highly migratory tuna takes place within the claimed EEZ of coastal States and access denial was becoming a serious issue for distant water tuna vessels.

As a result, beginning in 1984 representatives of the U.S. tuna industry initiated access discussions with officials of several Pacific Island coastal States located adjacent to the prolific skipjack tuna fishery in the western and central Pacific Ocean. The purpose of the discussions was to explore the possibility of creating a regional access arrangement for the U.S. distant water tuna purse seine fleet, which up until this time had been operating primarily in the eastern tropical Pacific Ocean, off of Central America.

From 1985 to 1987, the U.S. tuna industry, working cooperatively with the U.S. Government, continued to pursue a regional tuna access arrangement in the western and central Pacific Ocean region. In 1987, this effort resulted in the precedent setting fisheries treaty between the United States and the sixteen Pacific Island States, that of the western and central Pacific region. Since its inception, the SPTT has embodied the spirit of UNCLOS and has become a foreign policy success story for the United States in the central and western Pacific Ocean region.

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The SPTT created a licensing and conservation regime over an area of some 10 million nautical miles including the high seas and the juridical zones of the coastal States in the western and central Pacific Ocean region. The SPTT recognized coastal State jurisdiction over the tuna resource within the respective juridical zones but acknowledged the obligation of the coastal States to cooperate with “States whose nationals fish in the region to ensure conservation of the resource and promote the objective of optimum utilization of the resource throughout the region”. In essence, the treaty was constructed on the provisions of Article 61 and Article 64 of the UNCLOS. The treaty has been in effect since 1987, and was recently extended for an additional ten years commencing in 2003.

During the negotiations leading up to the signing of the 1995 U.N. Agreement for the Implementation of the Provisions of the UNCLOS relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the 1995 Agreement), the SPTT was referred to often as the model to be followed in establishing conservation and management criteria for a tuna based RFMO. The 1995 Agreement made it clear that highly migratory fish stocks can only be effectively conserved and managed as a biological unit throughout their entire range. In addition, the 1995 Agreement supported the language in Article 64 of the UNCLOS, that there is an obligation on the part of both the fishing States and the coastal States to ensure the optimum utilization of the resource throughout the region.

Subsequent to the 1995 Agreement being adopted, negotiations were commenced to establish a RFMO for the western and central Pacific Ocean. In 2000, this effort culminated in the signing of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (the Convention). Again, during the negotiations leading up to the signing of the Convention, the SPTT was used liberally as a model for the conservation and management provisions that should be included in the Convention. Of particular satisfaction to the U.S. tuna industry was the wording of Article 5 of the Convention dealing with the principles and measures for conservation and management. The pertinent language reads:

*In order to conserve and manage highly migratory fish stocks in the Convention Area in their entirety, the members of the Commission shall, in giving effect to their duty to cooperate in accordance with the 1982 Convention, the Agreement and this Convention:*

*a) Adopt measures to ensure long-term sustainability of highly migratory fish stocks in the Convention Area and promote the objective of their optimum utilization. (emphasis added)*

- **Conservation and Management of Tuna Stocks in the Western and Central Pacific**

The conservation and management of tuna stocks in the western and central Pacific (the Convention Area) is the primary responsibility of the WCPFC. The WCPFC, like other international RFMO, operates on the basis of consensus. The membership of the WCPFC consists of both coastal States and distant water fishing nations (DWFN). Obviously, one of the most difficult challenges facing a RFMO attempting to reach consensus on conservation and management measures for highly migratory tuna is

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ensure that the measures apply throughout the range of the resource ( in the case of the WCPFC, the Convention Area).

There are two major obstacles within the WCPFC to arriving at a consensus on effective conservation and management measures. First there is the expected conflict between the coastal States and the DWFN over the extent that management measures are needed and what management measures are necessary. Second, there is the jurisdiction and sovereignty dispute between the two groups. For the most part, the DWFN believe that the WCPFC conservation and management measures should extend over the entire range of the resource, both within the EEZ of the coastal States and the high seas. The coastal States, on the other hand, believe that the WCPFC only has jurisdiction over the high seas and should allow the coastal States to impose conservation and management measures within their respective EEZ. To date, this matter has not been resolved.

Even though consensus building is difficult within the WCPFC, the United States, as a result of the SPTT, is in a unique position to facilitate effective conservation and management. The coastal States of the WCPFC are also all parties to the SPTT. Many of the conservation and management measures debated within the WCPFC have already been adopted in the SPTT. In addition, the United States is a DWFN and is therefore sensitive to the legitimate concerns of other DWFN. The United States has used its unique position to ensure that the conservation and management deliberations within the WCPFC stay focused on the need for effective management of the highly migratory tuna throughout their biological range.

In order to have effective conservation and management of highly migratory tuna the RFMO must be able to rely on a statistically valid data base that covers the spectrum of the fishery. Although U.S. purse seine vessels fishing pursuant to the SPTT provide reliable data for the western and central Pacific region, the WCPFC has not been able to establish a data collection program from other tuna vessels operating in the region that is deemed reliable. Large areas of the Convention Area, such as the juridical zones around Indonesia and the Philippines have no reliable data collection program in place. Although efforts are underway to address the data needs of the WCPFC it is critically important that this be resolved as quickly as possible.

Effective conservation and management also requires the monitoring of fishing activities in the region. Again, the U.S. purse seine fleet in the region is bound by the SPTT to, carry observers onboard, employ VMS onboard, submit real-time reports on fishing activities, and document by-catch of other species that may be taken in association with fishing operations. To date, the WCPFC has not been able to reach consensus on establishing similar programs for the other DWFN fleets that operate in the Convention Area.

Lastly, effective conservation and management requires an enforcement program that ensures that the necessary management provisions and controls are strictly adhered to by each of the fishing vessels operating in the Convention Area. The SPTT provides for the enforcement of its conservation and management provisions and the U.S. purse seine fleet is subject to prosecution by the U.S. Government for any violation. As of yet, there are no agreed upon enforcement provisions in the WCPFC.

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It is not my intention to take issue with the WCPFC for its failure to achieve a comprehensive conservation and management program in the western and central Pacific tuna fishery. I believe they have made much progress in this area but there is much to be done. It is important to note, however, that most of the conservation and management measures under discussion within the WCPFC are already contained in the SPTT. This demonstrates both the importance of the SPTT and the commitment of the U.S. purse seine fleet to effective tuna conservation and management.

- **Capacity**

To a large degree, capacity in the western and central Pacific tuna fishery has been controlled by the Pacific Island coastal States (PICS). The PICS, working collaboratively through their Palau Arrangement (a multilateral agreement between certain PICS) set a limit on the number of purse seine vessels that can be licensed in the region at 205 vessels. Licenses are divided into three categories.

The highest priority is given to the SPTT licenses since these licenses were created by a multi-lateral treaty and provide revenue to all of the PICS. The second priority is given to the FSM Arrangement (another multilateral agreement between the PICS) licenses that are issued to DWFN vessels that meet certain economic benefit criteria to the PICS. The FSM Arrangement license allows the licensee to fish in most of the juridical zones in the region, although not as extensively as permitted under the SPTT license.

Thirdly, are the bilateral licenses that are issued by individual PICS to DWFN vessels that pay an agreed upon license fee. These licenses are restricted to the EEZ of the issuing PIC and comprise most of the licenses issued to DWFN vessels in the region. Although the bilateral licenses probably provide greater licensing revenue to the issuing PICS than either the SPTT or FSM Arrangement licenses, they are given third priority status since they do not foster regional fisheries development.

The PICS, through the Forum Fisheries Agency, their regional fisheries authority, maintain a register of fishing vessels allowed to operate in the region. In calculating the 205 purse seine vessels allowed to operate in the region at any one time, the PICS grant the United States the first 40 licenses since this is the number of licenses set forth in the SPTT. In the event that the United States does not fully utilize its full complement of 40 licenses in any fishing year, the PICS add the unused portion of the licenses to what they have termed, "the special arrangements category. These are licenses that may be issued under the FSM Arrangement or on a bilateral basis to get to the 205 total for the year. Currently, the United States is using thirteen of the SPTT licenses and the PICS have allotted twenty-four special arrangement licenses.

In addition to limiting the number of purse seine vessels operating in the western and central Pacific region to 205, the PICS have recently announced their intention to implement a vessel day scheme (VDS). Under the VDS, each purse seine vessel operating in the region will be allocated a given number of days to fish within the EEZ of the relevant PICS issuing the days. According to the PICS, the number of fishing days allotted to a vessel will correlate to the size of the vessel and the conservation concerns of the PICS.

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In allocating fishing days under the VDS program the PICS have stated that first priority will be granted to the SPTT vessels, then the FSM Arrangement vessels and lastly the bilaterally licensed vessels. Obviously this puts a premium on holding a SPTT license since these vessels will be granted sufficient fishing days under the VDS program to operate yearly within the entire SPTT area. This was one of the motivating factors in the creation of SPTC and the decision by SPTC to rebuild the U.S. purse seine fleet at this time.

As stated, the capacity controls alluded to above are the product of the PICS in the western and central Pacific region. The WCPFC was not consulted on either the 205 license limit or the VDS. The WCPFC addressed capacity by passing a series of resolutions asking all of its members to “exercise reasonable restraint in respect of any expansion of fishing effort and capacity in the Convention Area”. The WCPFC has attempted to limit the capacity of each national fishing fleet to the capacity that existed in 1999. The United States maintained a capacity of 38 purse seine vessels in 1999 and although it is entitled to 40 licenses under the SPTT, has agreed to limit its capacity to the 1999 level.

The WCPFC has to decide whether to extend the VDS program to the high seas, adopt an alternative measure on the high seas or convince the PICS to adopt an alternative measure within their EEZ. Common sense seems to dictate that capacity controls, including limits on fishing days, should cover the entire Convention Area, not just the EEZ or the high seas area. Also, it makes sense that enforcement of any VDS or other capacity control should be lodged within the WCPFC. Currently, the VDS program would only apply to the EEZ of the PICS and would not be reviewed or enforced by the WCPFC.

- **Yellowfin and Bigeye Tuna Conservation and Management**

Recently, concerns over the harvest of juvenile yellowfin and bigeye tuna have become an issue within the WCPFC. According to the South Pacific Commission (SPC), the scientific advisor to the WCPFC, there has been a gradual increase in the take of smaller, juvenile yellowfin and bigeye over the past ten years in the Convention area. The SPC concludes this take is due to an increase in fishing on “fish aggregating devices” (FAD). The SPC has recommended this be studied and conservation and management measures be adopted to ensure that neither of the fish stocks be allowed to decline below their maximum sustainable yield (MSY) level.

It is anticipated that the WCPFC members will take appropriate action at their annual meeting in December 07 to address the yellowfin and bigeye concerns. This will be a good test for the consensus making of the WCPFC as there are a number of proposals for addressing this concern. As someone vitally interested in the sustainability of all tuna resources, I support whatever steps are necessary to follow the recommendations of the SPC.

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- **Conclusion**

Having spent most of my adult life associated with the fishing industry, I firmly believe that we must do everything possible to ensure the sustainability of our valuable fishery resources. I have attached to this testimony the sustainability policy that we developed within U.S. Tuna Foundation when I was the Executive Director. This policy has been incorporated into a sustainable program that the U.S. canned tuna processors have entered into with the World Wildlife Fund and Wal-Mart.

In order to ensure the sustainability of our tuna resource we have to support the RFMO programs. We cannot effectively conserve or manage highly migratory tuna on a unilateral basis. Within the RFMO, we have to support data collection that is statistically based and reliable. Based on the scientific review of the data, the RFMO must adopt recommended conservation and management measures that cover the biological range of the highly migratory tuna. The RFMO must have the authority to monitor and enforce the conservation and management measures it adopts. Finally, the RFMO must eliminate IUU fishing in its region and, giving full recognition to the importance of existing regional licensing and other arrangements, control fishing capacity.

We support our government's effort to address the sustainability of tuna stocks through the relevant RFMO programs. We are convinced that the SPTT gives our government a unique opportunity to facilitate the establishment of an effective conservation and management program in the western and central Pacific region. The WCPFC has an opportunity to incorporate the sustainability spirit contained in the UNCLOS, the SPTT and the 1995 Agreement. Both government and private industry must ensure this spirit is translated into effective conservation and management of our highly migratory tuna.

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## USTF POLICY REGARDING SUSTAINABILITY OF TUNA FISHERIES

**USTF** supports international efforts to conserve and manage highly migratory fish stocks such as tuna. **USTF** believes this can best be achieved through an international commitment to take measures to prevent or eliminate IUU fishing, over-fishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of the fishery resources.

**USTF** also supports international efforts that are technologically and economically practicable to mitigate by-catch. In addition, **USTF** supports, when necessary, the adoption of conservation and management measures for species belonging to the same marine ecosystem or associated with or dependent upon the target tuna stocks, with a view to maintaining or restoring such species above levels at which their reproduction may become seriously threatened.